

IN THE  
Supreme Court of the United States

JUL 27 1940

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October Term, 1940

No. ....285

P. M. JACKSON, Trustee in Bankruptcy for the Estate of  
Leonard J. Woodruff, a Bankrupt,

*Petitioner,*

*vs.*

E. A. LYNCH, Receiver in Bankruptcy of the Estate of  
Leonard J. Woodruff, Alleged Bankrupt,

*Respondent.*

PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT AND  
BRIEF IN SUPPORT THEREOF.

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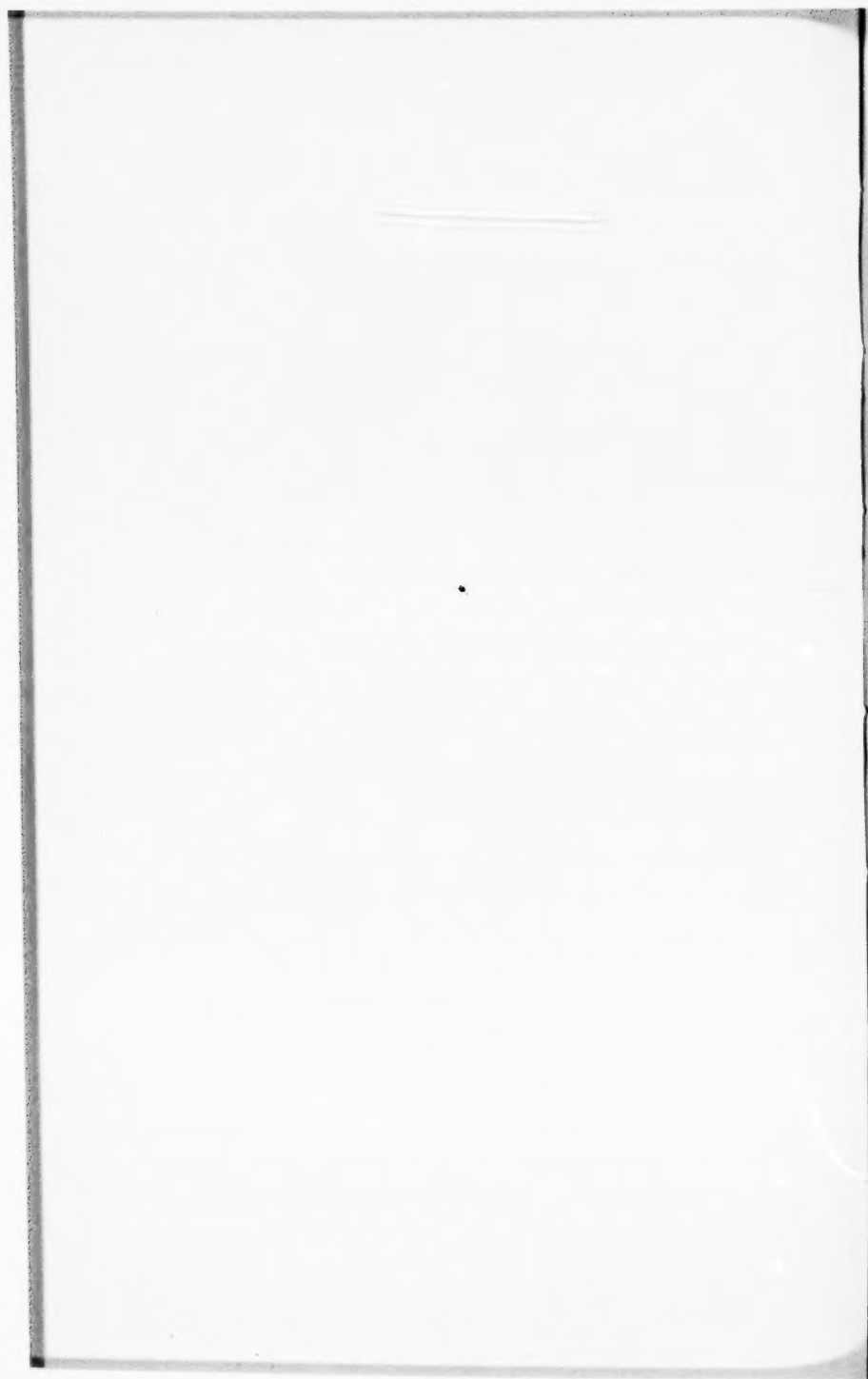
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E. A. LYNCH, Receiver in Bankruptcy of the Estate of  
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**PETITION FOR WRIT OF CERTIORARI TO  
THE UNITED STATES CIRCUIT COURT OF  
APPEALS FOR THE NINTH CIRCUIT.**

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P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt, as your petitioner, respectfully prays that a writ of certiorari issue to review a judgment entered May 10, 1940 in the United States Circuit Court of Appeals for the Ninth Circuit in Case Numbered 9401 entitled "P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt, Appellant, vs. E. A. Lynch, Receiver in Bankruptcy of the Estate of Leonard J. Woodruff, Alleged Bankrupt, Appellee".

### Questions Presented.

1. After the entry by the District Court of an order adjudging an individual to be a bankrupt on a voluntary petition therefor: Can a District Court in another district with knowledge of said adjudication entertain an involuntary proceeding to adjudge the same person a bankrupt, take possession through a receiver, operate the bankrupt's property in conflict with the Court and its Trustee first assuming jurisdiction?
2. After the entry of an order of transfer under General Order No. 6: Can the District Court thus deprived of the right further to proceed, enjoin the transfer of the records, fix fees, and order their payment, as a condition to a transfer of the records?
3. Can ancillary proceedings be lawfully accomplished in another district, upon an involuntary petition, without complying with General Order No. 51, where said proceedings were not in aid of the primary court but in conflict therewith and without the consent of the primary court or its officers?



### Statement.

The facts upon which the foregoing questions arose are stated as follows in the opinion of the Circuit Court of Appeals [Tr. 80]:

“On July 5, 1939, Leonard J. Woodruff filed a voluntary petition in bankruptcy in the United States District Court for the Eastern District of Oklahoma predicated jurisdiction upon the proposition that his principal place of business during the preceding six months was in that district. The order of adjudication was made on the same day and P. M. Jackson, the appellant, was selected as trustee in bankruptcy in such proceeding.

On July 13, 1939, an involuntary petition in bankruptcy was filed against Leonard J. Woodruff in the United States District Court for the Southern District of California praying that he be adjudged a bankrupt and seeking the appointment of a receiver to conserve the assets of the bankrupt within the district. The court appointed E. A. Lynch, the appellee, as receiver in bankruptcy. Jurisdiction was predicated upon the ground that the alleged bankrupt had a domicile within said district for more than six months prior to filing petition and that for more than ten years his principal place of business had been located in said district. The petition was by a single creditor whose claim was for \$278,631.71, evidenced by a judgment for that amount. It did not purport to be a petition for ancillary administration, although at the time of filing it the creditor knew that the alleged bankrupt had previously been ad-

judicated a bankrupt by the District Court for the Eastern District of Oklahoma and so informed the judge who appointed the receiver.

As it is not questioned that the receivership was necessary to conserve and protect the assets of the bankrupt within the Southern District of California, it is unnecessary to elaborate the subject further than to say that it involves, among other things, the possession and control of a large stock of merchandise.

In view of the pendency of these proceedings in Oklahoma and in California the trustee in bankruptcy appointed by the District Court for the Eastern District of Oklahoma, purporting to act under order No. 6 of general orders in bankruptcy promulgated January 16, 1939, effective February 13, 1939, invoked the authority of the Oklahoma court to determine whether or not it should make an order directing that all further proceedings be had before it and transferring to that court the bankruptcy proceedings pending before the United States District Court for the Southern District of California. The order applied for was made. A copy of this order was filed with the Clerk of the District Court for the Southern District of California and was brought to the attention of the court by the clerk. The court, by order, declined to make the order transmitting the record and proceedings until it had settled the accounts of the receiver and allowed compensation to him and his attorney. It further ordered that within five days the receiver and his attorneys file their

report and petition for compensation. The trustee in bankruptcy appointed in the proceedings in the Eastern District of Oklahoma moved the court to revoke this order but it refused to do so and confirmed the previous ex parte order. From this order denying the trustee's motion this appeal was taken. In the meantime an appeal to the Circuit Court of Appeals for the Tenth Circuit had been taken from the order of the District Court of Oklahoma assuming jurisdiction over the California proceedings under the provisions of General Order in Bankruptcy No. 6."

Thereafter the Circuit Court of Appeals for the Ninth Circuit, on June 21st, 1940, affirmed the lower court's acts, denied the petition for rehearing, granting, however, a stay of mandate pending filing of this petition. [Tr. 89.]

An appeal was taken to the Circuit Court of Appeals for the Tenth Circuit from a motion to dismiss the proceedings in Oklahoma and from the entry of an order under General Order No. 6. Both lower court orders were affirmed by the Tenth Circuit Court of Appeals on May 29th, 1940.

The statement at the end of the opinion by the Ninth Circuit Court of Appeals as follows:

"The temporary retention of the papers was merely incidental to that order and it appears that the papers were shortly thereafter transmitted." [Tr. 87.]

is in error, which circumstance was called to the attention of the Ninth Circuit Court of Appeals in the petition for rehearing at page 15.

### Reasons Relied Upon for Allowance of the Writ.

It is respectfully submitted by your petitioner and relied upon as reasons for the granting of the writ prayed for, that:

(a) The opinion of the Circuit Court of Appeals for the Ninth Circuit in holding that a District Court in California could entertain primary proceedings to adjudge a person a bankrupt and take possession of property with knowledge of and after the entry of a final judgment adjudging the same person a bankrupt leads to confusion in the administration of bankruptcy estates and violates the law requiring that one court of bankruptcy give full faith and credit to final judgments of another court of bankruptcy, as laid down by this court in

*Murphy v. John Hofman Company*, 211 U. S. 562,  
29 Sup. Ct. 154, 53 L. Ed. 327;

*United States v. Bank of N. Y. & Trust Co.*, 296  
U. S. 463, 477, 56 Sup. Ct. 343, 80 L. Ed. 331,

and by the Circuit Court of Appeals for the Sixth Circuit in

*In Re Continental Coal Corp.*, 238 Fed. 113, 115.

(b) That the opinion of the Circuit Court of Appeals for the Ninth Circuit will make meaningless General Orders No. 6 and 51, promulgated by this Court, in that the opinion permits the appointment of a receiver not in aid of the primary court and permits such appointment without complying with the requirements of subdivisions (1) and (2) of General Order No. 51.

(c) That the opinion of the Circuit Court of Appeals for the Ninth Circuit is of distinct public interest in that

it sanctions multiplication and duplication of expenses in bankruptcy estates and points the way of circumventing the Bankruptcy Act and the General Orders in Bankruptcy promulgated by this Court. The Bankruptcy Act and the General Orders of this Court are designed to prevent the very thing that the Ninth Circuit Court of Appeals has sanctioned herein.

(d) The Circuit Court of Appeals for the Ninth Circuit has decided an important question of general law in conflict with the weight of authority, and has departed from the established and usual course of judicial proceedings, so as to call for the exercise of this Court's power of supervision. The imposing weight of authority with which the decision at bar is in conflict is expressed in the following cases:

The basic principle that where several courts have originally primary jurisdiction and one of those courts functions in exercise of that jurisdiction is of long standing and well established.

*Slinack v. Superior Court*, 216 Cal. 99, 13 Pac. (2d) 670;

*Cutting v. Bryan*, 206 Cal. 254, 274 Pac. 326;

*Covell v. Heyman*, 111 U. S. 176 (28 L. Ed. 390, 4 Sup. Ct. Rep. 355);

*Farmers Loan & Trust Co. v. Lake Street E. R. Co.*, 177 U. S. 51 (40 L. Ed. 667, 20 Sup. Ct. Rep. 564);

*Kline v. Burke Construction Co.*, 260 U. S. 226 (24 A. L. R. 1077, 67 L. Ed. 226, 43 Sup. Ct. Rep. 79);

*Martin v. Oliver*, 260 Fed. 89, 92.

The rule is tersely stated in the case of *Ponzi v. Fessenden*, 258 U. S. 254 (22 A. L. R. 879, 66 L. Ed. 607, 42 Sup. Ct. Rep. 309, see also *Rose's U. S. Notes*, Supp.). The Supreme Court there declared:

“We live in the jurisdiction of two sovereignties, each having its own system of courts to declare and enforce its laws in common territory. It would be impossible for such courts to fulfill their respective functions without embarrassing conflict unless rules were adopted by them to avoid it. . . . The chief rule which preserves our two systems of courts from actual conflict of jurisdiction is that the court which first takes the subject-matter of the litigation into its control, whether this be person or property, must be permitted to exhaust its remedy, to attain which it assumed control, before the other court shall attempt to take it for its purpose.”

Wherefore, your petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Honorable Court, directed to the United States Circuit Court of Appeals for the Ninth Circuit, commanding that court to certify and send to this Court for its review and determination, on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case numbered and entitled on its docket No. 9401, P. M. Jackson, Trustee in Bankruptcy for the Estate of Leonard J. Woodruff, a Bankrupt, Appellant, vs. E. A. Lynch, Receiver in Bankruptcy of the Estate of Leonard J. Woodruff, Alleged Bankrupt, Appellee,

and that said judgment of the United States Circuit Court of Appeals for the Ninth Circuit may be reversed by this Honorable Court, and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem meet and just; and your petitioner will ever pray.

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THOMAS J. KELLEY,  
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